

Douglas C. Smith, Esq. (State Bar No.160013)
 dsmith@smitlaw.com
 SMITH LAW OFFICES, APC
 4204 Riverwalk Parkway, Suite 250
 Riverside, California 92505
 Telephone: (951) 509-1355
 Facsimile: (951) 509-1356

JS-6 (Stayed), Placed on Inactive

Attorneys for Plaintiffs
 KASANDRA W. HERBERT and M. H., a minor, by
 and through her Guardian Ad Litem, KASANDRA W. HERBERT

UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

KASANDRA W. HERBERT and M. H.,
 a minor, by and through her Guardian Ad
 Litem, KASANDRA W. HERBERT,

 Plaintiffs,

 vs.

 UNITED STATES OF AMERICA and
 DOES 1 through 10, Inclusive,

 Defendants.

CASE NO.: 5:14-cv-00266-VAP-SP

**~~PROPOSED~~ ORDER RE
 STIPULATION FOR
 DISMISSAL OF PLAINTIFF
 M.H.'S CLAIMS AND STAY
 OF PLAINTIFF KASANDRA
 HERBERT'S CLAIMS**

*Complaint filed on 10/31/13
 Removed to USDC on 2/11/14*

ORDER

Based on the separately filed Stipulation for Dismissal of Plaintiff M.H.'s
 Claims and Stay of Plaintiff Kasandra Herbert's Claims, the Court ORDERS as
 follows:

(1) With respect to minor M.H.'s action, the Court presently lacks subject
 matter jurisdiction over such action because (a) minor M.H.'s FTCA claim
 presented on or about January 27, 2014 has not been "finally denied" by the
 appropriate Federal agency, within the meaning of 28 U.S.C. § 2675(a) and 28
 C.F.R. Part 14.2(c), and (b) the requisite six months has not yet expired without
 such Agency "final disposition" that would then give minor M.H. the option, under

1 28 U.S.C. § 2675(a), to treat the failure by the agency to make such final
2 disposition as a "final denial" of said FTCA claim, so as to give minor M.H. the
3 right to proceed with the filing of a federal action, and vesting this Court with
4 subject matter jurisdiction over such action.

5 (2) With respect to Kasandra Herbert's action, the parties are in
6 disagreement as to whether this Court presently has subject matter jurisdiction.
7 Regardless, the parties desire to now stay (subject to the limitation in (6) below)
8 Kasandra Herbert's action until the refileing of the minor M.H.'s action following
9 final denial of the minor's claim under 28 U.S.C. § 2675(a). Upon refileing of
10 M.H.'s action, M.H.'s action and Kasandra Herbert's action can be consolidated,
11 and the stay as to Kasandra Herbert's action vacated and the actions can proceed.

12 (3) In the event minor M.H.'s claim is resolved prior to the refileing of
13 the minor's action, then the stay on Kasandra Herbert's action may be vacated by
14 this Court on application by the parties.

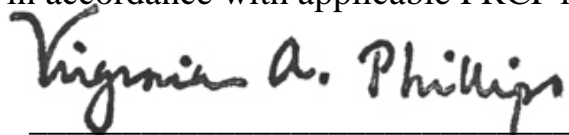
15 (4) Nothing in this Order shall constitute a waiver of Defendant's
16 right to contest subject matter jurisdiction of this Court as to Kasandra Herbert's
17 claim upon any vacating of the stay.

18 (5) Accordingly, the Court herein orders M.H.'s claims dismissed without
19 prejudice subject to minor M.H. being able to file a new action after final denial by
20 said agency within the meaning of 28 U.S.C. § 2675(a); and the Court herein
21 orders Kasandra Herbert's action stayed in accordance with said Stipulation.

22 (6) During the stay the parties are permitted to seek records and other
23 things by way of subpoena authority in accordance with applicable FRCP rules.

24 IT IS SO ORDERED.

25 DATED: May 9, 2014



Hon. Virginia A. Phillips
U.S. District Court Judge